

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

v.

TOM MCPHERSON

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CRIMINAL NO. 6:06-CR-46

**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On December 16, 2013, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Tom McPherson. The government was represented by Ken Hawk, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Bill Baldwin.

Defendant originally pled guilty to the offenses of Possession with Intent to Distribute Methamphetamine, a Class B felony. This offense carried a statutory maximum imprisonment term of 40 years. The United States Sentencing Guideline range, based on a total offense level of 23 and a criminal history category of VI, was 95 to 115 months. On November 29, 2006 U.S. District Judge Leonard Davis of the Eastern District of Texas sentenced Defendant to 92 months imprisonment followed by 4 years supervised release, subject to the standard conditions of release, plus special conditions to include substance abuse testing and treatment and financial disclosures. On January 22, 2013, Tom McPherson completed his period of imprisonment and began his term of supervised release. On November 4, 2013 the conditions of Tom McPherson's release were modified to include placement in the residential reentry center.

In its petition, the government alleges that Defendant violated his terms of supervised release by twice changing his residence without notifying his probation officer; abandoning his

job, resulting in termination, without notifying his probation officer of the change in employment status; failing to enter the residential reentry center; and failing to participate in random drug testing by failing to call the random drug testing line, and by failing to keep substance abuse counseling appointments with Kaye Ratzlaff, L.P.C. on October 24, 2013, and October 30, 2013.

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by making changes in residence or employment without notifying his probation officer; by failing to enter the residential reentry center; or by failing to participate fully in drug testing and treatment services, Tom McPherson will have committed a Grade C violation. U.S.S.G. § 7B1.1(a). Upon a finding of a Grade C violation, the Court may (A) revoke probation or supervised release; or (B) extend the term of probation or supervised release and/or modify the conditions of supervised release. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of VI, the Guideline imprisonment range for a Grade C violation is 8 to 14 months. U.S.S.G. § 7B1.4(a).

At the hearing, Defendant pled true to the allegations set forth above. The government recommended 9 months imprisonment, plus 6 months of unserved community confinement, for a total of 15 months, with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, and the agreement of the parties, the Court **RECOMMENDS** that Tom McPherson be committed to the custody of the Bureau of Prisons for a term of imprisonment of 9 months, plus 6 months of unserved community confinement, for a total of 15 months, with no supervised release to follow. The Court further **RECOMMENDS** that the place of confinement be FCI Seagoville, Texas.

Defendant has waived his right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to Chief U.S. District Judge Leonard Davis for adoption immediately upon issuance.

So ORDERED and SIGNED this 18th day of December, 2013.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE